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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,409	09/04/2003	Timothy M. Keiser	10269/20	6575

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EXAMINER

GRAHAM, CLEMENT B

ART UNIT PAPER NUMBER

3628

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/655,409	<b>Applicant(s)</b> KEISER ET AL.	
	<b>Examiner</b> Clement B. Graham	<b>Art Unit</b> 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 6/15/06.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 20-32, 34, 38-43 and 97-143 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-32, 34, 38-43, 97-143 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Claims 20-32, 34, 38-43, 97-143 remained pending in this application and claims 33, 35-37, and 44-96 has been cancelled.
- 2 Final rejection dated 8/11/05 has been withdrawn.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 20-143, are rejected under 35 U.S.C. 102(e) as being anticipated by Hereinafter Keiser et al (Hereinafter Keiser U.S Patent 5, 950, 176).

As per claimed 20, Keiser discloses a method for trading a derivative financial instrument comprising:  
receiving at least one order to buy or sell the instrument, the financial instrument related to an item having a plurality of stages of development associated therewith comprising at least one pre-release stage and at least one post-release stage.(see column 1 lines 44-67 and column 2-22 lines 1-77) determining a price for the instrument based at least in part on the development stage of the item at a time of a trade; and  
executing a trade on the instrument at the determined price.(see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 21, Keiser discloses wherein the item comprise a movie and the price of the instrument in a pre-release stage is based at least in part on estimated box office revenues of the movie and in a release stage the price of the instrument is based at least in part on actual box office revenues of the movie. .(see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 22, Keiser discloses wherein the item has an undetermined release date, the method further comprising fixing the

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release date for the item after the execution of the trade. .(see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 23, Keiser discloses re-leas date wherein in a pre-release stage the price of the instrument is based at least in part on estimated revenues associated with the item and wherein in a release stage the price of the instrument is based at least in part on actual revenues associated with the item. .(see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 24, Keiser discloses wherein the plurality of stages of development associated with the item comprise a plurality of pre-release stages, and the price for the instrument is based at least in part on a likelihood of success associated with each pre-release stage. .(see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 25, Keiser discloses wherein each of the stages of development has a development factor associated therewith and wherein the price of the instrument is determined by multiplying an initial price for the instrument by a development factor.(see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 26, Keiser discloses wherein the instrument is traded in an initial offering and the price of the instrument is based at least in part on a number of shares issued in the initial offering for the instrument.(see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 27, Keiser discloses wherein the price of the instrument is further based at least in part on at least one of estimated revenues associated with the item and actual revenues associated with the item.(see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 28, Keiser discloses wherein the item is a movie in a post-release stage and the price for the instrument is based at least in part on an opening weekend box office gross revenue and historic multiplier for total gross revenue. .(see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 29, Keiser discloses further comprising triggering an automatic ghost trade for the instrument. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 30, Keiser discloses wherein triggering the automatic ghost trade comprises: retrieving a buy probability constant; generating a random trade constant.(see column 1 lines 44-67 and column 2-22 lines 1-77) placing a buy order when the buy probability constant exceeds the random trade constant ; and placing a sell order when the buy probability constant does not exceed the random trade constant.(see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 31, Keiser discloses wherein the determining the price of the instrument comprises: determining a buy-sell imbalance between tore buy orders and t4ae sell orders for the instrument; and computing a price increase or decrease for the instrument based on the buy-sell imbalance.(see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 32, Keiser discloses wherein the price of the instrument is increased or decreased incrementally based at least in part on a security price increment constant. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 34, Keiser discloses further comprising: a security break threshold to the computed price increase or decrease and increasing or decreasing the price of the of the instrument based at least in part on a security break increment when the increase or decrease exceeds the security break threshold . (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 38, Keiser discloses further comprising:

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comparing a stock halt threshold to the computed price increase or decrease and halting trading when the computed price increase or decrease exceeds the stock halt threshold. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 39, Keiser discloses wherein trades are executed in cycles each cycle having a market price associated therewith and wherein the price of the instrument is determined by increasing or decreasing the market price of a previous cycle by the computed price increase or decrease. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 40, Keiser discloses further comprising storing trade volume information and trade price information for each trade order for a plurality of instruments. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 41, Keiser discloses further comprising:  
receiving a query for requesting trade volume statistics for a selected instrument;  
analyzing the stored trade volume information in response to the received query;  
and  
generating and displaying the trade volume statistics for the selected instrument in response to analyzing the stored trade volume information.  
(see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 42, Keiser discloses further comprising:  
receiving a query for requesting buy versus sell volume statistics for a selected instrument;  
analyzing the stored trade volume information and the stored trade price information in response to the received query; and  
generating and displaying the buy versus sell statistics for the selected instrument in response to the analyzing the stored trade volume information and the stored trade price information. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 43, Keiser discloses further comprising:

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storing a plurality of categories of trade information relating to the plurality of trade orders;

receiving a query for requesting statistics for a selected category in a selected instrument(see column 1 lines 44-67 and column 2-22 lines 1-77) analyzing stored categories of trade information in response to the received query; and generating and displaying statistical information for the selected category in the selected instrument in response to the analyzing the stored categories of trade information. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 97, Keiser discloses wherein the item is at least one of a product, a movie, and a service company. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 98, Keiser discloses a method comprising: receiving a request for information associated with at least one derivative financial instrument related to an item having a plurality of stages of development associated therewith comprising at least one pre-release stage and at least one postrelease stage; and communicating a price for the at least one instrument in response to the request, the price determined based at least in part on the development stage of the item at a time of a trade. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 99, Keiser discloses wherein the item comprises a movie, and the price of the instrument in a prerelease stage is based at least in part on estimated box office revenues of the movie and in a release stage the price of the instrument is based at least in part on actual box office revenues of the movie. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 100, Keiser discloses wherein in a prerelease stage the price of the instrument is based at least in part on estimated revenues associated with the item and wherein in a release stage the price of the

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instrument is based at least in part on actual revenues associated with the item. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 101, Keiser discloses wherein the plurality of stages of development associated with the item comprises a plurality of pre-release stages, and the price for the instrument is based at least in part on a likelihood of success associated with each pre-release stage. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 102, Keiser discloses wherein each of the stages of development has a development factor associated therewith and wherein the price of the instrument is determined by multiplying an initial price for the instrument by a development factor. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 103, Keiser discloses wherein the instrument is offered in an initial offering and the price of the instrument is based at least in part on a number of shares issued in the initial offering for the instrument. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 104, Keiser discloses wherein the price of the instrument is further based at least in part on at least one of estimated revenues associated with the item and actual revenues associated with the item. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 105, Keiser discloses wherein the item is a movie in a post-release stage and the price for the instrument is based at least in part on an opening weekend box office gross revenue and a historic multiplier for total gross revenue.

As per claimed 106, Keiser discloses further determined based at least in part on a buy sell imbalance on between buy and sell orders for the instrument and at least one ghost trade in the instrument triggered automatically. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 107, Keiser discloses wherein the at least one ghost trade is a buy order if a buy probability constant associated with the



instrument exceeds a randomly generated trade constant and the at least one ghost trade is a sell order if the buy probability constant associated with the instrument does not exceed the randomly generated trade constant. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 108, Keiser discloses wherein the price reflects a price increase or decrease applied to a previous price for the instrument based on a buy-sell imbalance between buy orders and sell orders for the instrument. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 109, Keiser discloses wherein the price increase or decreased is computed based at least in part on a security price increment constant. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 110, Keiser discloses wherein the price reflects a security break increment when the increase or decrease exceeds a security break threshold. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 111, Keiser discloses wherein trades in the instrument are executed in cycles, each cycle having a market price associated therewith, and wherein the price reflects an increase or decrease applied to the market price of the instrument for a previous cycle. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 112, Keiser discloses a system comprising at least one computing device having a memory associated therewith, the memory comprising software stored thereon that when executed performs a method comprising: receiving at least one order to buy or sell a derivative financial instrument, the financial instrument related to an item having a plurality of stages of development associated therewith comprising at least one pre-release stage and at least one post-release stage(see column 1 lines 44-67 and column 2-22 lines 1-77) determining a price for the instrument based at least in part on the development stage of the item at a time of a trade; and

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executing a trade on the instrument at the determined price. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 113, Keiser discloses wherein the item comprises a movie and the price of the instrument is based at least in part on estimated box office revenues of the movie in a pre-release stage and the price of the instrument is based at least in part on actual box office revenues of the movie in a release stage. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 114, Keiser discloses wherein the item has an undetermined release date, the method further comprising fixing the release date for the item after the execution of the trade. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 115, Keiser discloses wherein in a prerelease stage the price of the instrument is based at least in part on estimated revenues associated with the item and wherein in a release stage the price of the instrument is based at least in part on actual revenues associated with the item. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 116, Keiser discloses wherein the plurality of stages of development associated with the item comprise a plurality of pre-release stages, and the price for the instrument is based at least in part on a likelihood of success associated with each pre-release stage. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 117, Keiser discloses wherein each of the stages of development has a development factor associated therewith and wherein the price of the instrument is determined by multiplying an initial price for the instrument by a development factor. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 118, Keiser discloses wherein the instrument is traded in an initial offering and the price of the instrument is based at least in part on

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a number of shares issued in the initial offering for the instrument. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 119, Keiser discloses wherein the price of the instrument is further based at least in part on at least one of estimated revenues associated with the item and actual revenues associated with the item. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 120, Keiser discloses wherein the item is a movie in a post-release stage and the price for the instrument is based at least in part on an opening weekend box office gross revenue and a historic multiplier for total gross revenue. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 121, Keiser discloses further comprising triggering an automatic ghost trade for the instrument. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 122, Keiser discloses wherein triggering the automatic ghost trade comprises:

retrieving a buy probability constant; generating a random trade constant;

placing a buy order when the buy probability constant exceeds the random trade constant(see column 1 lines 44-67 and column 2-22 lines 1-77) and

placing a sell order when the buy probability constant does not exceed the random trade constant. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 123, Keiser discloses wherein determining the price of the instrument comprises:

determining a buy-sell imbalance between buy orders and sell orders for the instrument; and computing a price increase or decrease for the instrument based on the buy-sell imbalance. (see column 1 lines 44-67 and column 2-22 lines 1-77).

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As per claimed 124, Keiser discloses wherein the price of the instrument is increased or decreased incrementally based at least in part on a security price increment constant. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 125, Keiser discloses further comprising: comparing a security break threshold to the computed price increase or decrease; and increasing or decreasing the price of the instrument based at least in part on a security break increment when the increase or decrease exceeds the security break threshold. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 126, Keiser discloses further comprising: comparing a stock halt threshold to the computed price increase or decrease; and halting trading when the computed price increase or decrease exceeds the stock halt threshold. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 127, Keiser discloses wherein trades are executed in cycles each cycle having a market price associated therewith and wherein the price of the instrument is determined by increasing or decreasing the market price of a previous cycle by the computed price increase or decrease. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 128, Keiser discloses further comprising storing trade volume information and trade price information for each trade order for a plurality of instruments. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 129, Keiser discloses wherein the item is at least one of a product, a movie, and a service company. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 130, Keiser discloses a system comprising at least one computing device having a memory associated therewith, the memory comprising software stored thereon that when executed performs a method comprising:

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receiving a request for information associated with at least one derivative financial instrument related to an item having a plurality of stages of development associated therewith comprising at least one pre-release stage and at least one postrelease stage; and communicating a price for the at least one instrument in response to the request, the price determined based at least in part on the development stage of the item at a time of a trade. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 131, Keiser discloses wherein the item comprises a movie, and the price of the instrument is based at least in part on estimated box office revenues of the movie in a pre-release stage and the price of the instrument is based at least in part on actual box office revenues of the movie in a release stage. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 132, Keiser discloses wherein the price of the instrument is based at least in part on estimated revenues associated with the item in a pre-release stage and wherein the price of the instrument is based at least in part on actual revenues associated with the item in a release stage. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 133, Keiser discloses wherein the plurality of stages of development associated with the item comprises a plurality of pre-release stages, and the price for the instrument is based at least in part on a likelihood of success associated with each pre-release stage. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 134, Keiser discloses wherein each of the stages of development has a development factor associated therewith and wherein the price of the instrument is determined by multiplying an initial price for the instrument by a development factor. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 135, Keiser discloses wherein the instrument is offered in an initial offering and the price of the instrument is based at least in part on

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a number of shares issued in the initial offering for the instrument. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 136, Keiser discloses wherein the price of the instrument is further based at least in part on at least one of estimated revenues associated with the item and actual revenues associated with the item. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 137, Keiser discloses wherein the item is a movie in a post-release stage and the price for the instrument is based at least in part on an opening weekend box office gross revenue and a historic multiplier for total gross revenue. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 138, Keiser discloses the price of the instrument further determined based at least in part on a buysell imbalance on between buy and sell orders for the instrument and at least one ghost trade in the instrument triggered automatically. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 139, Keiser discloses wherein the at least one ghost trade is a buy order if a buy probability constant associated with the instrument exceeds a randomly generated trade constant and the at least one ghost trade is a sell order if the buy probability constant associated with the instrument does not exceed the randomly generated trade constant. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 140, Keiser discloses wherein the price reflects a price increase or decrease applied to a previous price for the instrument based on a buy-sell imbalance between buy orders and sell orders for the instrument. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 141, Keiser discloses wherein the price increase or decreased is computed based at least in part on a security price increment constant. (see column 1 lines 44-67 and column 2-22 lines 1-77).

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As per claimed 142, Keiser discloses wherein the price reflects a security break increment when the increase or decrease exceeds a security break threshold. (see column 1 lines 44-67 and column 2-22 lines 1-77).

As per claimed 143, Keiser discloses wherein trades in the instrument are executed in cycles, each cycle having a market price associated therewith, and wherein the price reflects an increase or decrease applied to the market price of the instrument for a previous cycle. (see column 1 lines 44-67 and column 2-22 lines 1-77).

### **Conclusion**

### **RESPONSE TO ARGUMENTS**

4. Applicant's arguments filed 6/15/06 has been fully considered but they are moot in view of new grounds of rejections.


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B Graham whose telephone number is 703-305-1874. The examiner can normally be reached on 7am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on 703-308-0505. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-0040 for regular communications and 703-305-0040 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

CG

September 3, 2006

  
FRANTZY POINVIL  
PRIMARY EXAMINER  
*AU 3628*